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ABSTRACT

The major methods and strategies employed by community college negotiating teams and the role of the board are examined. Discussions are provided of the causes of the emergence of collective bargaining in higher education, what the first concern of the board should be, how the board can provide leadership, whether the faculty choice of agent is a serious concern of the board, when the board's active involvement should begin, what options the board has, whether the board can or should express its reaction, who should represent the board, how the negotiator should involve the board, and the role of the president. Then, the following subjects are examined: how the negotiator proceeds, why there is an emphasis on privacy, how negotiations begin, what negotiation actually means, what challenges arises at the bargaining table, what may be at stake at the bargaining table, whether bargaining is naturally aimed toward impasse, what to do if impasse comes, and the "game plan" of negotiations. Finally, descriptions are given of the board's role in ratification, how the board begins to live with a contract, the implication, the administration of a contract, how the negotiator can aid in implementation, the function of the grievance procedure, and whether bargaining will end all other faculty/administrative relationships. (DB)

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THE COMMUNITY COLLEGE BOARD OF TRUSTEES AND NEGOTIATIONS WITH FACULTY

By Ray Howe

American Association of
Community and Junior Colleges

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INTRODUCTION

Collective bargaining in colleges is one of the least understood aspects of post-secondary education. As a result, chief administrators of community colleges, junior colleges and technical institutes are sometimes faced with frustrating situations caused by the sudden appearance of militant faculties. Governing boards normally have not been adequately prepared to deal with this kind of challenge.

J. I. Butzner, trustee, Gloucester County College, Sewell, New Jersey, after previewing this book, stated: "Mr. Howe has written a paper which should be read by every community college trustee. In my opinion he properly emphasizes the important parts of the negotiating process, including those of selecting a negotiator, and placing unqualified confidence in him; building trust on both sides of the table; keeping negotiations within the confines of the board proposals; and the implementation of a contract."

Butzner, and trustees like him, are not promoting collective bargaining. However, he is promoting the idea that trustees should adopt the responsible stance of being prepared. It is the purpose of this book to examine the major methods and strategies employed by negotiating teams and, more importantly, the role of the board.

The author, Ray Howe, is currently executive assistant to the superintendent for staff relations, Dearborn Public Schools, Dearborn, Mich. Henry Ford Community College is a part of the Dearborn Public School System. Thus, in his capacity, Howe serves as chief negotiator for the college as well as the elementary and secondary public schools.

Howe has a wealth of experience in collective negotiations on both sides of the bargaining table. Ten years ago he was vice president, American Federation of Teachers, and negotiator for the faculty at Henry Ford Community College. Later he was appointed executive dean and represented the administration of the institution in negotiations with faculty. During the last three years, Howe has negotiated contracts on behalf of the entire public school system. It is safe to say that he is one of the most experienced negotiators in the community college field.

William H. Meardy, Executive Director
Association of Community College Trustees

THE COMMUNITY COLLEGE BOARD OF TRUSTEES AND NEGOTIATIONS WITH FACULTY

Among the many challenges that confront members of community college boards of trustees, none, in the days immediately ahead, seems likely to present more problems or require more adjustment than will the emergence of collective bargaining. In more than 150 community colleges or technical institutes this process has already been embraced by the teaching staff. In addition to these, the faculties of almost 100 four-year institutions have similarly adopted collective bargaining. Fully 10% of the total number of post-secondary institutions in this country are thus affected, and approximately 15% of the nation's higher education faculty. More colleges and more faculty on each level seem virtually certain to follow suit in relatively short order.

WHAT IS THE BACKGROUND?

Why this is occurring is a matter of increasing interest, especially on the part of those who deplore it. Fundamentally, they seek not an answer to this question but rather to another which logically is closely related. That is, how its coming can be prevented.

The causes of the emergence of collective bargaining in higher education are far from clear, but there are some discernible indicators.

In some respects it is imitative. Faculty have seen other social groups organize and achieve what appear to be significant gains. Further, these groups have managed to endure social disapproval of their tactics with relative ease and little expense. In particular, faculty may be looking at the phenomenon of collective bargaining

in elementary and secondary education, where it has had nation-wide impact and has quite apparently attained significant increases in economic benefits for teachers.

In other respects, the reach for bargaining power is probably reflective of developments within higher education. There is no denying the existence of extreme economic pressures on almost all colleges and universities. In the face of these exigencies, faculty may feel relatively helpless, especially when local campus actions seem so inadequate in impacting on legislators or the voting public, in whose hands solutions often lie.

Since faculty salaries represent a major portion of any collegiate budget, when cutbacks appear to be required, faculty may regard itself, with some degree of accuracy, as the principal recipient of the burden.

Many boards and many presidents have for years paid lip service to "meaningful involvement of faculty in institutional decision-making" and have done little or nothing to give substantive meaning to the phrase. The movement towards collective bargaining certainly reflects a rising wave of alienation either from the image of the "profession" or from a sense of identity with the institution that was so often assumed.

Some think that what is happening is a result of the relative affluence that has been achieved by faculty, especially in the past decade. Affluence itself may serve to increase aspirations and may accentuate and intensify the determination to achieve those aspirations. Perhaps faculty seize upon collective bargaining simply because they discern no viable alternative for the relief of their sense of frustration with themselves as individuals, with the college in general, or the society as a whole.

At some future date a definitive study of the motivations prompting the invocation of collective bargaining may be developed. For the present, however, there is no prescription which can be advanced for the assured prevention of the phenomenon. The more immediately productive course would seem to be learning how to live with it as successfully as possible.

WHAT IS THE FIRST CONCERN OF THE BOARD?

The most basic responsibility of the board of trustees in the face of the appearance of collective bargaining is to preserve and/or improve its usual relationship with and through the president of the institution. The board is not required to be directly involved in the collective bargaining process. Indeed, should it attempt to do so, this might prove to be an error of some considerable magnitude.

Few boards or board members are well equipped either by training or experience to deal effectively with either the processes of collective bargaining or the manifold details involved in the day-to-day administration of a college, and few, indeed, are the board members who, committed as they are to other significant pursuits, can devote the amount of time and effort successful collective bargaining demands.

What the coming of collective bargaining really requires is that the traditional relationship between the board and the administration must be strengthened so that, under even the most extreme pressures, the board can and will rely upon the president to act effectively and efficiently as its principal adviser and chief agent. The responsibility for successful bargaining falls directly upon the president, a burden which he, in turn, if he is wise, assumes indirectly, either through his subordinate administration or through external agents of his choosing with, of course, the approval of the board.

If collective bargaining should arise unexpectedly on a given campus, there is a real cause for concern on the part of the board. It would imply that channels of communication between the faculty and the administration have been inadequate. No administration should ever really be caught unaware. It should know well in advance. The signs of possibility or probability are always there.

In logical consequence, therefore, no board or administrator lacks some degree of opportunity to prepare for collective bargaining *if* either chooses to do so. Failure to prepare, then, in the normal order of things, is a matter of choice for which responsibility must be borne,

whether it be for making of the choice or the failure to have made the choice.

Collective bargaining does not come to any campus under the auspices of or even with the approval of either the administration or the board of trustees. It comes simply because and when the faculty wish it and because either the law requires its acceptance or the specific circumstances of the moment on the particular campus suggest strongly that it be formally recognized when requested.

Where there is no legal requirement to acquiesce in collective bargaining, should the faculty seek it, the board may, of course, exercise its option to deny the request. The decision here is a "political" one rather than a legal one. The probability is, however, that denial of such a request will create many more problems than it solves. It is significant to note that as of the summer of 1972 the legislatures of 29 states have adopted formal authorization for some type of collective bargaining and more states seem likely to follow suit in relatively short order.

The reasons why the faculty desire collective bargaining may, as we have noted, vary and they may be good, bad or indifferent reasons. They may be conscious reasons or subconscious. Such reasons may be substantial or insubstantial. They may be accurately realistic or utterly unrealistic, or anything in between.

Collective bargaining comes at the insistence of one party and one party alone, even though it has momentous effect on at least two parties.

The board is, in consequence, in a position somewhat like that of the groom at a "shotgun wedding." That is, it may be where it is as a consequence of its own actions, but it is certainly not there by virtue of its immediate preference. "Shotgun weddings" can, of course, lead to happy marriages, but they require a good deal more hard work to make them so.

HOW CAN THE BOARD PROVIDE LEADERSHIP?

The board which is confronted with even the possibility of collective bargaining would do well to determine in advance of its coming, insofar as possible, what the

board's particular role will be and how its role may be best performed. For the role of the board actually begins while bargaining is still in prospect.

The most basic and continuing function of a board of trustees that is faced with the specter of collective bargaining is to set the tone for its own conduct, for the conduct of its agents and, hopefully, through some process of example, for the conduct of those who come bearing the process of negotiations to their doors. The determination of the board must be that the bargaining process as, and if it develops, will serve the welfare of the institution in as productive, contributory and stabilizing a way as is humanly possible. Board members, individually, will have a variety of personal reactions to collective bargaining. Many will regard it as absolute anathema. Only a relative few will look upon it with any degree of favor.

Board members, collectively, must remember, however, why they are trustees. They have, in trust, the responsibility to protect and promote the well-being of the institution and the best interests of those whom the institution serves, and those who serve the institution. This is the only reason for existence of a board of trustees. Board members are not elected or appointed, as the case may be, to pursue their own personal preferences or their own biases or their own prejudices. They hold office to assure that whatever occurs in the development of the college will be channeled, to the utmost degree possible, toward positive ends. The emergence of collective bargaining is a development which is no exception to this.

We have some evidence of the value of this approach. The history of collective bargaining in the private sector reveals in many instances, even when its introduction was most bitterly and perhaps even brutally resisted by management, that where and when it was ultimately accepted and was ably carried on by both parties, it produced many salutory affects. Yet it is not something that will simply occur in the normal order of things. It must be achieved, and achieved by patient, continuing hard work.

Even the most sincere and deep-rooted commitment to such positive goals will not, obviously, guarantee beneficial outcomes, but the *lack* of any such commitment will go far to assure that such positive outcomes will simply *not* result.

IS THE FACULTY CHOICE OF AGENT A SERIOUS CONCERN OF THE BOARD?

The board is not required to play any role whatsoever in the determination of the identity of the bargaining agent.

The faculty will do this for itself.

Indeed, the board has no real interest in this. For while the faculty may be most urgently persuaded that there are distinctive, even vital, differences between the organizations that will seek to represent them in collective bargaining, from the vantage point of the administration and the board, instances already plentifully available attest this will be no significant matter. No matter which organization emerges as a bargaining agent representative of faculty, the overall objectives of the agent will be similar. The demands will be almost identical and the techniques, skills, talents, arts and/or artifices will, in the long haul, be very much the same. To the board then, one bargaining agent will, sooner or later, prove to be much like another.

An additional reinforcement of this view comes from the recent indications of increasing unity between and among once highly competitive agents. In higher education the most evident and timely example is the recent *rapprochement* accomplished between the once bitter rivals at the City University of New York, the Legislative Conference and the United Federation of College Teachers. Until only a short time ago these two organizations were vigorous rivals. Today they have combined and are acting resolutely as a single unit.

Similarly there are clear-cut examples of increasing cooperation, even unity, between the American Federation of Teachers and the National Education Association in several local and state situations. And the N.E.A. had previously worked out some degree of cooperative relationship with the American Federation of State, County and Municipal Employees (AFL-CIO) on a national scale.

The importance of these tendencies toward mergers between organizations may, in the long haul, be far greater than we can currently foresee. It is not beyond the realm of possibility that there will be, on a nationwide basis, the unification of all or almost all the bargaining agent organizations in the relatively near future. If this should occur, it will have great significance for any individual board of trustees. The board will be confronted with a highly structured, well-financed, well-advised, well-supported bargaining agent and the individual board will be thrust into the role of a relatively unarmed David confronted with an extremely effective Goliath.

WHEN DOES THE BOARD'S ACTIVE INVOLVEMENT BEGIN?

When a faculty seeks recognition it will always seek recognition in behalf of a certain bargaining unit, that is, a well-defined group for which it seeks the right to bargain. While the board may have no legitimate interest in which organization bargains for faculty, it has a decided interest in the composition of the bargaining unit.

Its interest here is really two-fold: the extent of the unit and the limits of the extent of the unit, specifically, who is "in" and who is "out." For example, does the prospective bargaining agent urge the inclusion in the unit of such offices as department chairmen or any other position which the board may deem inappropriate? Conversely, is the prospective unit only a small fraction of those who appear to the board to have a recognizable "community of interest"? In the latter instance the board may well feel that *if* there is to be collective bargaining it should proceed to negotiate with a unit that is more broadly based, lest the board be confronted with the prospect of an escalating number of future splinter bargaining units.

These are legitimate, proper, *and essential* considerations for the board to raise.

WHAT OPTIONS DOES THE BOARD HAVE?

Either the formal recognition of the bargaining unit or the determination of the composition of the unit may be accomplished, fundamentally, by one of two routes. The first of these is by consent, meaning that, on the basis of

what it sees and knows, the board may voluntarily recognize the petition of those who would bargain and may accede to the scope of the defined bargaining unit that is sought by the bargaining agent-to-be. The precise limits of the bargaining unit may be determined through informal "negotiation" with the appellants who seek bargaining status.

The board may or may not recognize by consent. If it chooses not to do so, this is not a prejudicial act on its part.

In the event that consent is not granted, it is still possible that, by some process of impartial and, hopefully, objective external determination, recognition and the definition of the unit can be achieved. In states with collective bargaining laws, state mechanisms and agencies are usually provided for just such determinations. It can, however, be accomplished by almost any neutral third party, who is mutually respected by both parties in the dispute, but preferably by someone who has some experience with labor relations.

It is extremely difficult to generalize in all instances whether consent or external determination is better, but it is a reasonably good basic assessment that the external determination, while perhaps somewhat time consuming, may provide the better route. It provides at least for the possibility of an expression, via secret election, by all of those whom the bargaining will concern. While they may have previously signed authorization cards or petitions, the individuals who will compose the unit do, via election, enjoy an opportunity to register secretly and privately in a polling place their individual positions regarding whether they wish to be represented by the prospective bargaining agent. All possibility for coercion is thus minimized, if not eliminated entirely. There is absolutely no compulsion, except conscience.

Thus, it would appear that, all factors considered, the external determination route, as contrasted with the consent route, is the better one. There is, however, no hard and fast rule.

CAN, OR SHOULD, THE BOARD EXPRESS ITS REACTION?

It is vital that the board, both collectively and as individual members, maintain throughout the initial and formative stages of a collective bargaining relationship an extremely high degree of restraint and reserve, even perhaps to the point of silence. This should be true if an effort at organization of the faculty becomes known to them or while campaigns for recruitment of support are going on between the potentially rival organizations, and certainly through any process of petitioning and/or election.

This is equally true of administration.

The board, whatever its impulses, should certainly never express any preference between or among organizations that are contenders in the 'race' to achieve bargaining status. But it may choose to announce or publish its own feelings or views on collective bargaining in principle or as a practical matter, provided it does not seek to interfere with such efforts in any patent way which would be actionable. Regarding the latter possibility, it might be valuable to seek the advice of an attorney.

Yet the board should recognize that, politically, the expression of any of its preferences could have the effect of actually increasing the probability of the coming of collective bargaining. The board's inclination to oppose the process could make it seem more attractive and/or necessary to those faculty members who might be wavering in indecision.

This maintenance of a reserve is not an easy task.

Especially during the organization or recruitment stages, the administration and/or the board may be criticized and attacked, perhaps even quite unfairly. Almost predictably the "pitch" will be made to faculty that collective bargaining is absolutely essential because of the recalcitrant or intransigent nature of the administration, and/or the board, whose offenses, real or imagined, will be recited, if not documented, in voluminous detail. Such abuse, if abuse it be, must be borne with equanimity.

WHO SHOULD REPRESENT THE BOARD?

There is, however, something positive and important that should be considered at this early stage of development. That is the selection of a chief negotiator to represent the board and the administration. There are, of course, no hard and fast prescriptions for the selection of such an official. Each institution must decide how to pursue the process for itself. There are, however, guidelines of sorts that emerge rather clearly from the experience accumulated to date.

It is generally highly recommended, as has been said, that board members, either collectively or individually, *not* compose the bargaining team either in whole or in part. An extension of this is that, in consequence, no board member should, in the normal course of events, act as chief negotiator. It is also rather widely viewed as desirable that the president of the college *not* be the chief negotiator and that, indeed, he not even be an active, regular member of the actual negotiating team. It is further suggested in many quarters that, insofar as possible, the chief negotiator not be an administrative staff member whose basic function requires continuing contact and close cooperation with the faculty for the successful accomplishment of his responsibilities.

There are discernible personal characteristics that the chief negotiator might well possess. He should be extremely temperate and have a high tolerance for tension. In point of fact, he should be capable of doing his best work when the tension is at highest, and of doing it in a manner that will alleviate rather than aggravate tensions. He should have strong stamina both physically and psychologically. He should be an extremely flexible person and a quick thinker. He must be widely and deeply knowledgeable of both the process of collective bargaining and of the operational implications and needs of the particular institution.

The negotiator must understand much about behavioral processes and principles, and should have a respect and liking for human beings that will persist even when their frailties and foibles are at a maximum level of exposure. A sense of humor is a decided asset, especial-

ly if it includes the capacity to laugh at himself. He need be no superbeing, if he is a well-adjusted and reasonably secure person himself.

The agent must be open-minded to the argument of others and capable of seeing an issue from several differing perspectives. Yet, he must be capable of making a decision under stress and of maintaining unswerving confidence in his capacity to make intelligent and reasonable decisions that will withstand dissection by others.

This leaves unanswered the basic question of whether the chief negotiator should better be an "insider" or an "outsider." There are distinct advantages to each and there are recognizable and significant disadvantages to each. The "insider," for example, is more likely to possess a knowledge of, an identity with and a commitment to the purposes and the functional needs of the college. The "outsider" is far more likely to be knowledgeable of and comfortable with the processes of collective bargaining, although not perhaps of either collective bargaining in the public sector in general or in higher education in particular.

Either an "outsider" or an "insider" will require a high degree of supplementary preparation and continuing support in order to be more fit for the effort that confronts him.

The investment in a capable chief negotiator will be an expensive one if it is well done. Boards will be understandably tempted to cut costs in this area, but such "economies" may be dangerously false ones. It must be remembered that the stakes are extremely high. The fiscal stability of the college could conceivably be in jeopardy. The integrity of the institution, as the board sees it, may well be placed under vigorous attack. Considered in the light of this, no price tag may really be too high.

The selection of a chief negotiator and approval of the chief negotiator's selection of his "wingmen" may be the most significant single decision which the board is called upon to make.

Above all, the chief negotiator must be a person in whom the board is prepared to place almost unqualified confidence. He will do his work in private. The board may never, for good reason, have any valid opportunity to make an objective appraisal of his work until well after the fact of its completion. The board must therefore, have faith that this individual can and will do the best that can be done to attain the objectives the board is seeking, all factors considered; and the board must be prepared to endorse and support his work based upon that faith.

This sense of confidence is the nucleus of the greater significance which proceeds from the selection of a chief negotiator. That is his investiture with the authority to bargain. The board must consider seriously what "authority to bargain" really means. It is not the same as the responsibility to bargain. The responsibility to bargain is usually imposed upon a board by law. The authority to bargain is that which the board entrusts to the chief negotiator and allows him to come to the bargaining table prepared to negotiate in good faith, capable of compromise on critical issues and ready to make tentative agreements which will be subject to final ratification by both the board and the membership of the bargaining unit.

It is imperative that the board set limits on the authority of the negotiator, but it is equally important that these limits should not be so restrictive as to render him relatively inactive. It is incumbent upon the board to provide guidelines either in reference to financial considerations or regarding non-economic issues. The board should indicate its preference either in a positive or negative sense, and place a clear priority on those preferences. Any board member should feel free to make suggestions and the board as a whole should be sure that the negotiator has the fullest possible knowledge of its views on all matters which may potentially arise at the bargaining table.

Having come to this point, however, the board then must "turn the negotiator loose." His task becomes that of doing the very best he can *in the best way he sees*

fit within the established parameters of his vested authority. The board cannot conduct negotiations by remote control, nor can it undermine the authority of its agent by reducing him to the status of a messenger boy.

HOW SHOULD THE NEGOTIATOR INVOLVE THE BOARD?

This is by no means the end of the board's involvement. It is, in fact, only the beginning.

The negotiator bears the burden to keep the board as fully informed as is humanly possible. This is no easy task. There is no practical way that he can present the board with a running account of the ebb and flow of the many events which transpire at the bargaining table.

But the negotiator must consult with the board as often and as extensively as he deems necessary to assure that he understands every facet of the board's position in the face of ongoing developments, and to assure that the board understands every significant implication of the maintenance of its most current position(s).

The negotiator should advise the board on such matters as progress or lack of it as bargaining continues. He should present such alternatives as he can perceive that represent varying solutions to either immediate or foreseeable problems. He should inform the board well in advance of the possibility or probability of potential crisis and of the consequences he perceives of pursuing the route assigned to him.

Above all, he must have flexibility of judgment and of action. This is his lifeblood.

WHAT IS THE ROLE OF THE PRESIDENT?

Nothing that has been said regarding the relationship between the board and its chief negotiator negates or diminishes in any way the importance of the president. The president remains the chief and foremost resource of the board in the formulation of its policies and positions either prior to or during negotiations. He offers a balanced perspective which will include, but certainly transcends, the negotiations currently under way. It is conceivable, though it should not be common, that the recommendations of the president and of the chief negotiator may not always coincide. Their perspectives are signally different.

There is some dispute as to whether the board should deal with the negotiator solely through the president or whether the negotiator should have extensive face-to-face contact with the board. The latter course seems preferable for two rather obvious reasons. First, it minimizes the possibility for distortion, no matter how innocent, in the relaying of the views of the board. Second, the ability of the negotiator to observe and hear the board members individually as they deliberate, discuss and formulate their positions may be invaluable in helping him to both anticipate the challenges and to prepare for those challenges. He may also have a unique contribution to make to the board's understanding.

It is not essential that any board member or the president be, individually, an expert in the art of negotiation. It is mandatory, however, that each member and the president understand what happens in bargaining, so that they do not render unfair and uninformed judgments regarding directions or guidelines for the conduct of negotiations. Therefore some description of what transpires in the negotiating room is highly in order.

The responsibility of the board with respect to actual negotiations is very direct in regard to the preparation of a program of concrete proposals to be advanced in its behalf early in the negotiating with faculty. There is a legitimate difference of opinion as to whether or not the board/administration team should actually formally advance such proposals *en masse* or should merely prepare them as available counter-efforts to any propositions advanced by faculty. The latter course has some advantages, but is risky in that should faculty not advance a proposal on this particular matter, it is very difficult at that stage to initiate a 'counter proposal' where no proposal exists.

Further, the board and administration should have an active interest in assuring that some items are included in a prospective contract that the faculty would never consider advancing. Consequently, it is recommended that the board prepare, always with the advice of administration, a relatively comprehensive compilation of concrete inclusions which it seeks to effect and

have them presented by the initiative of its negotiating team.

Naturally the board will not be so idealistic as to believe that each and every one of its proposals will be achieved. Therefore, it should place a priority order on such proposals and communicate this priority unmistakably to its chief negotiator. In formulating such proposals, even those that the board does not expect to be achieved the first time around, it would be highly in order for the board to take a long view of the future of the college and again render a comprehensive set of objectives that will serve the college well in the several years ahead.

In addition, with the help of the chief negotiator and the president, the board should try to anticipate what demands the faculty will bring to the table. This should be done as comprehensively and as specifically as is possible. The purpose of this may be obvious, but deserves statement. Anticipation of such demands will allow for advance analysis and costing of any such proposals with economic implications and for the preparation of the most effective responses possible, whether the proposals be economic or non-economic.

Beyond this the board, again with the help of administration, should urgently attempt to predict as accurately as possible the settlement area, that is, precisely when and at what level of compromise the resolution of all differences between the board and the faculty is likely to be attained. This effort of speculative prediction of eventual outcomes is likely to be highly inaccurate at first, but proficiency will be acquired with experience and it is certainly to be hoped that any chief negotiator worth his salt will, in relatively short order, be able to predict these with almost pinpoint accuracy. Failing this, it is difficult, if not impossible, to formulate strategy in negotiations; and if no strategy is provided, it is questionable whether the tactics employed will reach any level except that of the momentarily expedient.

The board should understand, in general, that what it gets back from the bargaining table will almost never duplicate what its agents carry to the table. A great deal of compromise and of concession will invaria-

bly take place. The board will, of course, be somewhat disappointed. That is natural. But the board should, more than anything else, be very realistic and appreciate that this kind of dilution of its input will predictably occur to some degree no matter what the quality of the chief negotiator.

The chief negotiator, despite his most avid interest in keeping the board informed, will present to the board at best a digested and subjective version of what actually has transpired at the table. Much of the effort at the bargaining table will appear to many outsiders, to be a waste of valuable time, especially where, for meeting after meeting after meeting, extremely little tangible progress seems to have been made. This will seem to be so because very few agreements of even a tentative nature will actually have been reached.

Yet this is not in any sense of the word necessarily a sign of failure or lack of progress. It is in the natural course of things.

What the board must remember, as well as the chief negotiator, is that during this period of haggling something constructive *may* be occurring and the team may actually be doing two things: a) providing for credibility between the parties and b) creating a tone for the 'crunch' meeting of the future. It is essential that each party comes to believe that the other is telling the truth. Only when this credibility factor is clearly established through interaction on lesser matters can there be any meaningful resolution of basic differences. The board will, again predictably, chafe under the pressures of the apparent lack of progress. Yet here it must be remembered that simultaneously with the closing of any credibility gap something else is occurring, namely the gradual recognition on the part of teachers and administrators alike of the realities of the situation, a recognition that allows for the making of an effective compromise.

It is possible, of course, that such constructive long-range developments are not taking place. The board should be as sensitive to this as it can be. Dogged, inflexible obstinacy is not of itself a virtue in any human equation, and is quite possibly characteristic of

weak individuals far more than of strong. It is not only the right but the responsibility of the board to reappraise, as needed, not only the validity of its own positions but also the capability of the negotiator(s).

HOW DOES THE NEGOTIATOR PROCEED?

The approach to the bargaining table must be neither casual nor unplanned, even though it may be carefully calculated to appear *both* casual and unplanned. Ideally, the act of negotiation will be the culmination of weeks, preferably months, of intensive preparatory work by a number of people, the product of which is an assured grasp of 1) the details of the operation of the enterprise and 2) the subtleties of the bargaining process itself.

Planning for and conduct of negotiations will, of course, differ with each particular institution and with the individual personalities of the negotiators involved, so that the delineation of specifics may be difficult, if not impossible. Yet there are a few guidelines which can be provided.

One spokesman must be agreed upon, or at the very least a strong chairman. Non-controlled and unlimited response at the table can be the most destructive force imaginable. No member of the team should be surprised by a statement of his colleague, agreements presumably having been achieved in caucus, and no member of the team should be allowed to surprise his colleagues by speaking spontaneously on *any* matter that is raised which has not yet been carefully considered.

A strict limitation should be imposed on the number of those to whom information about what actually transpires at the table will be reported. The role of the negotiator is to draw information and viewpoints from many persons and to reveal information to very, very few. Certainly the board and the chief executive officer must be kept reasonably informed, but the process of bargaining is at best a private one conducted behind closed doors *and kept there*. There will even arise matters that will not be and perhaps should, even dare not, be revealed to the most eminent of one's own constituency.

There are those who argue that an earnest effort should be made to include as many as possible in an

active role in the negotiations process, the hope being that as a consequence all administrators, for example, will accomplish a sense of affinity with collective bargaining from the board's point of view.

This may, however, be true only so far as the accumulation of data and the amassing of administrative problems, rectification of which is to be sought at the bargaining table, are concerned. Beyond this, in the process of selection among administrative demands, in the establishment of priorities, in the determination of concessions to be made and positions to be held and the relative "costs" which will, however grudgingly, be paid, in none of these should more than a few be involved.

Only those directly involved with the formulation of policy, only those who *need* to know, should be privy to the vital proceedings of the negotiations room.

WHY IS THERE AN EMPHASIS ON PRIVACY?

No productive purpose is normally served by the publication of demands by either party. As a matter of fact, it may be detrimental to the bargaining process. Such demands once published, since they can then be readily compared and contrasted with the actual outcomes of negotiations, make concessions, which *must* be made throughout the continuing negotiations, far more difficult and far less likely.

The same factor explains the insistence on holding negotiation sessions behind closed doors. Public negotiations tend to become performances, performances in which positions are held, lest compromise be mistakenly regarded by the onlookers as surrender. For the onlookers in this case are more than an audience. They are constituents to whom one side or the other is responsible. The privacy of negotiations has a purpose. That purpose is to contribute to the accomplishment of successful negotiations.

HOW DO NEGOTIATIONS BEGIN?

Since all efforts at the bargaining table are devoted to the ultimate arrival at a mutually satisfactory agreement, initial energies should well be expended, either directly or indirectly, towards the creation of a favorable climate

for successful negotiations. This is not, and cannot be, simply a matter of the statement of good intentions. It must be evidenced. It must be demonstrated. Possibly this can be contributed to by the consideration of some few items on which agreement is relatively easy, especially if that agreement should incorporate some degree of compromise by one side or, preferably, both. The probability of profitable outcomes from the bargaining table is greatly increased if the parties at the table can each establish a sincere expectation of such results.

It is, of course, the basic responsibility of *both* parties at the table to make significant contributions to the creation of this "climate" or environment. The principal burden, however, will fall upon the management team, since the adversary is present by invocation of its own initiative, and management by virtue of necessity. The faculty, in consequence, comes expecting something productive. Management commonly does not.

Some tendency toward this positive viewpoint may be forthcoming if one reflects that collective bargaining is the best answer yet evolved from within a democratic society for the means through which matters in dispute between those who are employed and those who employ them can be peaceably resolved. This positive emphasis, an underlying principle of collective bargaining, should be kept continually in mind.

It is going to be very difficult for those who have long contended that such matters as salary and related items in academia should be negotiated *individually* between employer and employee to argue that collective negotiations have no propriety, especially when the individual employees involved have determined collectively that it does.

WHAT DOES NEGOTIATION ACTUALLY MEAN?

Assuming a productive climate can be created, what then

The next realization must be that this is a new and different process from any which educators have previously undertaken. It is not simply a faculty meeting with a more comprehensive agenda. It is not the determination, by consensus, of some position. It is the

means whereby a contract will be evolved, a contract reasonably comprehensive in nature and legally binding on both parties.

It will be a contract which will take precedence over any individual contracts existing within the province of the bargaining unit. The contract will succeeed and supersede any past practice no matter how well accepted that past practice might have been.

This contract will formalize many things which had long been assumed better handled informally. The negotiations process itself entails a number of formalities which may not prescribe conduct but which will certainly affect conduct. The formalization effect is, of itself, worthy of serious consideration. It evokes a considerable change in relationships.

As a consequence of the significance of the contract, the content of the contract, both in respect to major items and minutia, invites controversy, even conflict. Contention at the table is almost inevitable. The old bromide that when two parties are in general and ready agreement one of them is unnecessary is certainly pertinent but scarcely likely to be applicable. It is quite predictable that the contest will be at times heated, even within the most favorable climate. This, too, argues strongly for closed doors.

It also argues that the negotiator should be a very special breed of cat. He had best have an affinity for what transpires at the table. A low ulcer probability and a high pain threshhold are not enough. He must have sufficient immunity to and aptitude for pressure to be at his most effective when the pressures are greatest.

His is a thankless job. If he does it well his adversary may respect him but will not appreciate his work. However well he does it, his constituency may tend to feel he might have gained more and conceded less if he had just tried a little harder. They would not be human if they didn't.

He must have a wary eye for minute, often unintentional, signals of change, or of willingness to consider change, in the conduct of the adversary team col-

lectively and/or individually. He must have a perceptive and retentive ear to hear every word that is said and to take special note of what is *not* said, which may at any given moment be infinitely more important than what is said.

He must have a justifiable sense of self-confidence in his ability to make assessments and judgments. Most of these will be the result of deliberation and discussion with his colleagues but some, inevitably, will be made at the table, in the view of others and in the spontaneity of the moment.

He will have guidelines, even directions, from his constituency, perhaps in painful particulars, but he must stand ready to exceed and/or stretch these *if in his professional opinion* it is warranted to do so. He is after all, not a ventriloquist's dummy. He is an agent with all the power of agency, a man of power, a skilled craftsman. If competent, he is a creative artist. It is not his prime or ultimate responsibility to do precisely what his constituency either wishes or instructs; it is his basic responsibility to do for his constituency the best that can be done. It is as much his role to bring the board to the brink of reality as it is to perform the same service to the adversary he faces at the table, and the board should be aware and appreciative of this. It is in the board's best interest.

WHAT CHALLENGES ARISE AT THE BARGAINING TABLE?

Much can still be said about conduct at the table.

There must be an acute awareness of the importance of language. Precision and specificity are vital. Vagueness should be countenanced only where it is consciously intended *and where the consequences of this vagueness have been carefully studied and defined.* The language that is omitted may be as vital as, or more vital in instances than, the language included. Therefore what is *not* covered in a contract should be just as seriously determined as what is.

The ready availability of legal services is absolutely essential. Contractual relationships, bargaining aspects and responsibilities and prerogatives of boards all have legal implications. An attorney can also be extremely helpful in respect to the legal significance of words.

Whether or not the attorney is at the table, or is endowed with bargaining authority to any degree is, of course, a local determination. Opinions and practices differ widely.

The manner in which demands will be received will be determined either by law or ground rules established at the table. But one agreement that should be sought, as a practical necessity, is some cut-off point for the submission of demands. This does not bar the arrival at, by compromise, a differing proposal as a substitute for what is already on the table but it does mean that the parameter of the bargaining can be mutually and accurately understood. This is a most necessary preliminary for the construction of the area of settlement of matters in dispute. Negotiations cannot be open-ended.

Neither the board nor the administration should be appalled or even surprised if the demands advanced by the faculty should be voluminous in quantity. From an administrative point of view these are often regarded as a "wish-book" or, alternatively, an encyclopedia of irritations.

Actually, it is an extremely valuable document which reveals, perhaps for the first time, a listing of those things which disturb one or more of the college's faculty.

Faculty demands are usually formulated from a grass roots, broad based, solicitation of input. While some editing may take place, there is a tendency to advance a significant number of demands for two primary purposes: 1) to avoid the necessity of creating unnecessary controversy in the ranks of the membership by labeling even the most marginal proposal unreasonable; and 2) to have a reasonable supply of items available on which little success is realistically anticipated, when, as or if, tradeoff possibilities seem present. Each of these many proposals probably will receive some attention and discussion, though few will achieve this out of proportion to their true importance.

Many will simply disappear from the table at an appropriate time in the course of a process we call "weeding out the garbage," admittedly a mangled figure of speech but a significant part of the negotiating proc-

ess nonetheless. When the complete listing of demands emanating from either side is accomplished, a serious question of tactical approach is posed. Obviously one must start somewhere, and the accomplishment of agreement on minor or non-controversial items early in the process goes far to contribute to the climate to which reference was made earlier. Yet one must be aware of a risk.

When one accomplishes agreement on almost all the items, leaving only a few vital matters unresolved, the restricted number of items on the table is of itself a contributor to the probability of impasse. Flexibility in effecting a solution is greatly reduced. It is better, perhaps, to narrow down each single remaining issue to an area of *predictable* settlement and then move to another issue and do the same. If this is delicately handled, and it must be, there is, as the end of the road approaches, a greater possibility of the construction of a variety of "packages" of settlement, one of which *may* be eminently more acceptable than the others.

For this is really how settlement is often actually achieved. A "settlement" position is suggested, *not formally proposed*, that if the other party were to agree to acceptance of one position, compromise on two or three, capitulation on a couple of others and withdrawal of everything else, a settlement could be reached. The adversary may reply with its own alternative bundle of compromises wrapped up in a different, but similarly comprehensive, package. This may evoke a counterproposal, covering the same ground but representing a still differing combination of possible positions in which the emphases are somewhat altered, either slightly or greatly.

Such a "feeling out" process will continue until, hopefully, some mutually tolerable, if not acceptable basis for agreement is reached.

While the permutations approach the infinite, and rational considerations often give way to irrational, this is really bargaining at its best. The keystone here is the capacity to be extremely perceptive, even imaginative, but always flexible.

Because of this same emphasis on flexibility, multi-year contracts with a single re-opening clause with respect to salaries only have certain disadvantages. The negotiators faced with such "re-openers" have virtually no flexibility whatsoever to employ in achieving agreement. They are confronted immediately and frontally with the single, "gut" issue which is the "make-or-break" proposition. There is little "wiggle room," which is the lifeblood of the negotiator. That is not to say that multi-year pacts do not have their virtues; it is simply to remind that they do have their perils.

There is another advantage to the settlement approach just described that touches upon the most ominous burden of the negotiator. As the parties approach the "deadline" for settlement, whether that deadline is imposed by mutual agreement or by circumstances, the possibility of some form of alternative action looms large. A chief negotiator must ask himself what he wishes to have formally on the table when and if this should happen. He faces something of the proportions of a true dilemma. If he withholds something he is willing to concede, he *may* miss a golden opportunity for settlement, and thus fall short of the avoidance of the necessity of the alternate route. If, however, he commits everything he is prepared to offer and, having done so, fails to accomplish agreement at the table, then he is highly vulnerable, since it is quite likely that mediation, arbitration or a strike will produce a settlement somewhat different and perhaps more demanding than the "package" on the table at the time direct negotiations are broken off. He has no reserve to fall back on.

The significance of this decision is obvious.

The participants in bargaining will decide for themselves, perhaps without realizing it, how formal the relationship between and among them will be, and the desirability of written exchange of proposals and counter-proposals. Successful negotiations have been conducted in circumstances that include both possible extremes, and almost all variations between.

What should be noted, however, is that almost every contract negotiation will at some time or other face

the desirability, if not the necessity, of private conversations between key participants, probably the chief negotiators, away from the table. These conversations should be completely off-the-record, frank and direct joint appraisals of possibilities for avoiding impasse. The most common phrase employed will be "what would you do if we were to ---?" The importance of these private conversations is always great, but multiply as pressures for settlement mount. Much of what is discussed will not be revealed to *anyone* else. Unless the participants are worthy of that kind of trust, there is no purpose in the conversations. Such discussions are the ultimate test of the integrity and mutual respect which, hopefully, has been constructed between the protagonists.

WHAT MAY BE AT STAKE AT THE BARGAINING TABLE?

Much of the apprehension concerning the possibility of the coming of collective bargaining centers upon questions of its propriety to higher education in particular and education in general. Pivotal to this is emphasis on those matters which are distinctively academic in nature and which go to the heart of the reason for existence of the institution.

(As one approaches the matter it is interesting to note that labor unions and colleges and universities seem to share a common historical ancestor: the medieval guild. Some indications are that the scholars' guild actually preceded the guilds which emphasized mercantile and economic aspects).

Is there hope for preservation of institutional integrity in the face of the specter of bargaining? Are academic questions subject to the negotiations process? Can anything of the traditional be retained and preserved or is the revolution total in its impact?

It depends on the previous nature of the institutional approach and upon the personal and professional capacities of the chief negotiator. First of all we come perilously close to a generalization that everything relevant to the operation of the educational enterprise seems to verge on being negotiable, or, failing that, we can say that the question of what is negotiable is itself subject to determination by negotiations.

It is certain that, except for a gullible and naive adversary, what is *not* negotiable *cannot* be determined by unilateral pronouncement.

It is at least questionable whether it can be prescribed by law in any practical form. The prohibition by law of the act of striking in public employment may have inhibited the incidence of striking but it certainly hasn't eliminated it. If a bargaining agent feels any item is negotiable strongly enough to strike for its negotiability, the probability or at least the possibility exists that it *will* be negotiated.

Further, it is possible, indeed probable, that even if one takes an extremely restricted definition of "wages, hours, and conditions of employment," which *are* negotiable, that the separation of items into two categories, that is clearly negotiable or non-negotiable, may be beyond reason. Consider the process of student evaluation, *whatever it be.* This is a prime academic issue, but it is *also* clearly a condition of employment of the instructor. It is one of his duties.

Academic freedom is an example of how one can revert to hair-splitting argument. Many deplore the appearance of the confirmation of academic freedom in a master contract. "Academic freedom," they say, "is a matter of institutional integrity and is a matter of right and not a matter of negotiations." Some view it otherwise. "Academic freedom," they say, "is more secure if it rests on more than simply the insistence of the faculty and the whim of the board, if it, in short, is a contractual obligation of both."

Class size is clearly an educational consideration but, equally clearly, it has a bearing on one's working conditions.

How academic matters are handled may depend on two prime factors: 1) the historical pattern of the institution and the degree to which effective means have been provided to involve faculty in decision-making regarding such affairs; and 2) the capacities of the chief negotiators to work out a pattern of institutional operations whereby a structure of dual proportions, one for academic concerns and one for bargaining concerns, can

be mutually evolved. This will be extremely difficult, but it is not impossible.

IS BARGAINING NATURALLY AIMED TOWARDS IMPASSE?

In either the search for the separation of academic and bargaining matters or in the reach for a settlement, the negotiator must be acutely sensitive to one enduring thought: it is his responsibility to *avoid* impasse as much as possible, for as long as possible. The ultimatum should be put in cold storage and the impulsive termination of *any* discussion should be forsworn. *All matters, all agreements are tentative until the final moment when all issues are either resolved or removed from the table and the contract is completed.* The temptation to announce a categorical "No!" to anything may offer personal gratification to the individual spokesman, but it seldom contributes to the group objective. The deepest reservation can be communicated in such a manner as to fall short of inviting direct and immediate confrontation. The power of persuasion is not abandoned simply because the power of coercion always lurks near the table.

Three important aspects of bargaining which must additionally be provided for are: 1) specific provision of precise statements of responsibilities as well as prerogatives of both parties; 2) clear termination of the bargaining process with the accomplishment of a contract for a definite period of time (bargaining should not be a continuing year-long process); 3) precise definition of the manner in which the contract will be implemented and enforced with special emphasis on what is, and thus, by inference at least, what is not a grievance. Grievances should be restricted to the question of the failure to observe the contractual obligation!

As a consequence, the skill with which the contract is constructed or administered is evaluated through the operation of the grievance process. But what is advanced as a grievance should be regarded very carefully, for it is a fairly dependable indicator of issues on which bargaining will certainly transpire in the next contract negotiations.

All this presumes an agreement *is* reached on a contract. The problems which can arise in either achieving or implementing agreement are infinite. One comes

close to the conclusion that in the business of bargaining the problems of success are as great or greater than the problems of failure.

WHAT IF IMPASSE COMES?

Failure, of course, can occur.

The advance recognition of either the possibility or the probability of impasse can be somewhat unnerving. It may contribute either to impulse to surrender or to harden one's position beyond possibility of compromise. Either of these is extremely undesirable. In this situation the artifices of the negotiator are most severely tested.

The approach to impasse must be undertaken with certain understandings. First, a strike is not inevitable. There are other possibilities, as will be explained in a moment. Second, a strike, if it comes, need not be either entirely or even substantially destructive. There *is* a productive aspect that can be, and has been, attributed to the phenomenon. In the short run these positive attributes are extremely difficult to see, especially if one approaches the topic without looking for them. Third, a strike in education seems to be an exercise in the intensification of emotional stress and strain more than anything else. It is a test to see who, in John Kennedy's words, "blinks first." In education especially, it is an extreme burden on *both* sides. This must be remembered. The educational strike is more a form of political protest than it is an economic lever, *per se*. It may, for example, be basically a burst of anger, even righteous anger, against the confines within which bargaining must take place.

It must be continually borne in mind, however, that impasse at the table need not, indeed should not, automatically prescribe strike.

Between impasse at the table and a strike lie two or three steps, any one of which *may* be an alternative to a strike, and one of which *must* be an alternative to strike. These intermediate steps are mediation, fact-finding and arbitration.

Mediation occurs at or near the table, and is really an extension of bargaining. A third party, perhaps mutually agreed upon or in other instances provided by the

Labor Mediation Board, seeks, with mutual consent, to act as a catalyst to achieve resolution of the crisis. However mediation comes, the mediator must be recognized for what he is and what he is not. He is not the advocate for either side. Neither side has his sympathy or his support. He is not the promoter of the reasonable, the equitable or the ideal solution to the impasse. None of these. He is concerned only with achieving a solution, *any* solution, upon which he can bring the parties to agreement. Who compromises on what, and how much, is a matter of relative or even utter indifference to him.

The mediator will perhaps function best when the parties are reasonably near each other but far enough apart so that *he* can "negotiate" with each, individually and in turn.

Since the parties must agree to the mediated solution, the mediated solution is still a negotiated solution, albeit augmented by external assistance.

Mediation may either succeed or fail. If it succeeds that is the end of the bargaining process, for all matters are resolved. If, however, it fails, the parties may be obliged to enter a process known as fact-finding.

The process of fact-finding is somewhat different. Fact-finding, as distinguished from mediation, is more formalized and is a more recognizable departure from the processes of the bargaining table. Basically it is an attempt on the part of an impartial third party to get to, through the conduct of systematic inquiry, probably conducted in a quasi-judicial manner, the facts pertaining to all matters at impasse. On the basis of the facts ascertained the fact-finder issues his report and recommendations to the two parties. Neither of these parties is obligated to accept the solution posed by the fact-finder but the public release of the fact-finder's report will, it is hoped, generate some broad social pressures towards acceptance. The experience thus far in the public sector with fact-finding is "spotty" to say the least.

Since the parties must both "voluntarily" agree to the fact-finder's report before it can take effect, it can be well argued that the parties at the table, in the final analysis, act as the determinants of their own fate.

Arbitration of matters in dispute is quite different. Here the two parties must agree, or may be required to submit all unsettled matters to a decision by an impartial third party. If real arbitration takes place the solution arrived at is arbitrarily and automatically externally imposed—it is binding, although there have appeared in the public sector some modified forms of so-called "advisory" arbitration.

Mandatory arbitration exists where the parties are obliged by law to submit themselves to arbitration at a certain stage of impasse. Binding arbitration exists where the decision of the arbitrator is final.

Where there is a history of an incidence of strikes or other disorders, which are deemed disruptive of either the public safety or the public welfare, legislators seem inclined to turn quickly to the imposition of *mandatory* arbitration. What is surprising is not the degree of public acceptance of this, since the public's first concern is with stability, but rather the degree of enthusiasm the suggestion generates in either camp in the public sector. In the private sector those who bargain tend to regard mandatory arbitration as anathema, since it terminates negotiation and imposes decision-making from without on any party within. It would be surprising if management and faculty organizations alike did not similarly reject the imposition of mandatory arbitration, although *voluntary* mutual submission to arbitration may be an extremely constructive step. Here, it should be clearly understood, we speak of arbitration of matters in dispute between negotiating parties. Arbitration as an automatic and terminal step in the *grievance* procedure is an entirely different matter.

If true arbitration occurs, however, the possibility of strike disappears and it might seem at first glance that the employer in the public sector would always find arbitration preferable to the strike. Such should not be the case. The posture one adopts in the face of imminence and presence of a strike may go far to determine the probability of strikes in the future.

It may be helpful to regard a strike as a breakdown rather than an extension of the negotiation proc-

ess. The adoption of the latter view inhibits one from effective and constructive effort to get back to the table where a settlement can occur, while the former tends to make that effort a primary objective.

The best stance one can take in the face of such a crisis is a two-fold one. In public, the negotiator must be as calm and restrained but as resolute as possible. It is unwise and non-contributory, and often later extremely embarrassing, to proclaim the many things one will *not* do. Thunder may have its place in the order of natural phenomena, but it is unbecoming as a human characteristic of one in or near the bargaining arena. In private, however, one must be flexible and perhaps even more sensitive to bargaining nuances than is the case before the strike.

The probability exists that the ultimate end of the strike will still come via negotiations, *private* negotiations, which, in a period of maximum stress and strain, will be especially demanding. It must be assumed that the goal is still the same—to achieve a mutually tolerable agreement, and thus, from the negotiator's point of view, the strike is simply another phase to be endured. The impact of the strike is always greater upon those *not* at the table and yet it is designed and employed to apply additional indirect pressures on those at the table to weaken or concede or withdraw. It is remarkable that a phenomenon like a strike, that can be reasonably predicted, can be provided for in a variety of ways and can be endured with only moderate patience, should evoke such panic-laden responses as it sometimes does.

One should always, in negotiating, assume the possibility of a strike and determine positions to be taken at the table with due respect for this possibility. The threat of a strike is an effective weapon of the bargaining agent, but it should be used, like all weapons, with extreme care, and with proper consideration for all the consequences that can result. Further, the bargaining agent should always assume the management team *is* bearing the possibility of strike in mind in all its presentations. If this be true, and, in the main it is, the assumption that the invocation of a strike will cause any

significant difference in position is a vain and highly dangerous one. The fact is that holding a card face down may be a more significant factor in a poker game than exposing it. Once the bargaining agent has called a strike, his power of initiative is severely curtailed if not completely eliminated.

WHAT IS THE 'GAME PLAN' OF NEGOTIATIONS?

What transpires at the bargaining table is fundamentally a game. Many would reject this since a game is associated with the concept of a nonsense activity and certainly the outcomes of bargaining are serious. One can readily concede the stakes are high. But the "game," while nonsensical in some respects and irrational in most, does have definite rules and definite behavioral expectations.

Eric Hoffer, the longshoreman-philosopher, sounded a warning we might all well ponder. "One of the chief problems a modern society has to face," he once observed, "is how to provide an outlet for the intellectual's restless energies yet deny him power. How to make and keep him a paper tiger."

The name of the game is power, and the "tiger" is not a paper one.

Basically the intellectual community has always placed greatest reliance on the power of persuasion and upon the supremacy of reason. Today these are still present, but behind them, indeed beyond them, are the power of coercion and the dominance of emotion.

But the power to coerce is limited by the willingness to be coerced and the dominance of any one emotion is a transitory thing at best.

The fundamental question confronting those who prefer the power of persuasion and the rule of reason is whether they can reflect them meaningfully and evoke them in others without becoming either coercive or emotional themselves.

The emergence of a bargaining situation *is* a threat to those who cherish ascribed status, but it is a challenge and an opportunity to those who prize the quality of leadership and the attainment of achieved status. This distinction is vital.

WHAT IS THE BOARD'S ROLE IN RATIFICATION?

To most observers of the collective bargaining scene, however pleasurably remote they may be, the high drama and vital significance of the negotiating process seems to be reserved for those mysterious rites that are practiced behind the closed doors of the bargaining room.

Happily or unhappily such is not the case. That is but one side of the coin. The great tests of the validity and the vitality and the utility of the document come after it leaves the bargaining table and the hands of the negotiators.

Effective contract implementation can go far to compensate for weaknesses in a negotiated contract. Ineffective contract implementation can, conversely, weaken, and even destroy, the very best of negotiated contracts. It would be going too far to place a primary importance on either negotiations or implementation of a contract, for both are certainly vital. While the two topics can be separated for purposes of discussion, it must continually be kept in mind that in the world of practical affairs they are not only inseparable, they are interacting. The interaction is two-way. Problems arising in implementation which are not well resolved are predictably items which will arise at the bargaining table in the process of negotiating the next contract. Matters poorly negotiated create serious problems in implementation.

The first important step in breathing life into the contract is ratification. Ratification is, of course, the deliberative act of each constituency of the two parties involved in bargaining, which affirms the mutual acceptability of the document *in toto*.

The emphasis here on "acceptability" may be misplaced. It is not the primary function of the negotiating teams to produce an over-all "agreement" which is mutually satisfying to the two sides. It is rather their burden to produce a document which is mutually *un*satisfactory to each of the two sides. Irrational as it may sound, the best agreement may be one that is unsatisfactory to all, provided it is relatively equally unsatisfactory to each.

This is the context in which ratification should be deliberated and acted upon.

Either constituency may decline to ratify if it so chooses, in which case there is a bit of a problem. Should this occur, negotiation reconvenes. Whether or not it reconvenes between the same two sets of negotiators depends, of course, on the relative degree and nature of the dissatisfactions with the document of the constituency that declines to ratify. New participants are not usually a contribution in the short run, but each party still retains the right to designate its own representatives, including the right to change them.

In the normal course of things none of this will happen. The document will be ratified, but there are two comments regarding non-ratification that must be made.

First, refusal to ratify is predictably more likely by far to occur on the part of the faculty rather than by the constituency of the management team. This is often misinterpreted by management and is misinterpreted even more often by interested on-lookers. There really is, however, a very clear, simple and understandable reason for this. Throughout negotiation the management team has, relatively speaking, much more direct and easy access to the totality of its constituency. Because he has greater opportunity to discuss with his constituency the issues requiring resolution, both general and specific, and the varying possibilities for solution and the priorities of preference among them on the part of his constituency, the management negotiator has parameters that are much more clear and precise and much more attuned to the present situation. His problem is, quite simply, not to exceed them. If he does not do this, he may be reasonably confident of ratification of any tentative agreement he has achieved.

The negotiator for faculty seldom, if ever, enjoys this precise situation. While he received guidelines from his constituents, and he may receive limits to his authority at times, he usually receives these in advance of negotiations. During negotiations he will, perhaps, rely on an advisory and/or representative body, perhaps an executive board, which, it is hoped will support that which he brings back from the table for ratification. But there still remains the membership, each component of which

reserves, quite properly, the right to express himself individually and thus collectively, regarding the agreements reached in whole or in part. Only after the fact does the total membership really learn the comprehensive nature of the agreements achieved tentatively at the table. Only after this disclosure can the membership express its reaction on a sound basis.

There is another aspect of non-ratification that applies equally to either constituency. If it should be determined that ratification be withheld, it is wiser to reject the *entire* document and return it to the table for total reconsideration.

The negotiating team, whichever side it represents, should be as precisely and completely aware as possible why the contract was rejected, but it would be unwise to accept most or almost all of the contract and send back only selected portions of it for re-negotiation. In so doing, one hamstrings one's own negotiating team for two reasons.

First, this kind of action ignores the fact that the contract, as tentatively agreed to, is not a loose jumble of independent items. In the process of construction of a contract very often concessions are made regarding one article in order to attain some objective in another. In consequence, compromises occur *between* items as well as *within* items. If one party rejects one item, it had better understand that it may be rejecting the totality of whatever bundle of compromises created that item as a part of its existence. This may not be what the rejecting party anticipates, but reality often intrudes and dictates this consequence.

Second, if one party sends a negotiating team back to the table to re-negotiate one item which it rejects, it places that team in an extremely difficult position. Bargaining strength depends on many factors, but at base it is the capacity to maneuver, or "wiggle." "Wiggle room" has already been identified as the lifeblood of the negotiator. When he runs short of it, he is done.

If there is but one isolated item to be negotiated, if there is no other item on the table on which he can "wiggle," the negotiator can be replaced by anyone. His job

is just a matter of sitting there till somebody cracks or drops dead—or until some external element becomes the determinant of matters at the table.

It would be better by far to reject the document entirely, letting the negotiators know the objections, what changes are sought *and* what concessions might be available to "give" in order to "get" what is wanted.

HOW DOES THE BOARD BEGIN TO LIVE WITH A CONTRACT?

But let us assume that ratification has been achieved. A contract comes into formal existence and the task at hand is to live with it.

Living with a contract is always something of a burden for two very basic reasons: first, it is a requirement, as distinguished from a voluntary act; and second, the contract is by its very nature, a confining document, somewhat restrictive of and/or inhibiting to the exercise of the latitude and the flexibility which is so highly prized by any administrator of quality.

(It is perhaps an irony that the mediocre administrator may find less difficulty in living with a contract than may a good administrator. A thoroughly "tight" contract might conceivably allow for "push-button," decision-free, responsibility-free administration.)

Yet, in a collective bargaining situation, live with the contract, in one fashion or another, one certainly must. The urgent challenge is to try to live with that contract in such a way as to make the living with it a positive, contributory and generally stabilizing experience for the institution and for those who compose it.

The first necessity, however, is to publish and disseminate the contract to all those affected by it in any way, either directly or indirectly. This can have a most positive effect, offering, for example, some sense of reassurance and some reference point to the individuals concerned and/or involved, but it should never be ignored that the distribution of the contract also has some negative effect in that it also serves as a ready reference for those who incline to "flyspeck" and/or to look for loopholes through which they can either create or expand a breach. Happily, the latter viewpoint seems to be in the minority, but to the degree that it does exist, on

the part of either faculty members or administrators, it will prove to be an extremely irksome, perhaps even disruptive minority.

The mere distribution of the contract should not, however, be either expected or relied upon to do more than it readily does. It is certainly, for instance, no sufficient substitute for a planned program of in-service education for all administrative officers whose responsibility it is to execute or implement any provision of the contract. Such a planned program of in-service education should expose all administrators to all provisions of the contract and to as many implications of the contract as are discernible. The most immediate purpose of this in-service education is to eliminate, insofar as possible, and certainly to minimize, the possibility for violation, misinterpretation and/or misapplication of the contract. Potential errors of omission should be regarded as equally important with potential errors of commission. Even an extremely well-planned program of in-service education will never be 100% effective, but it can go a long, long way toward that objective.

WHAT ARE THE IMPLICATIONS FOR ADMINISTRATION OF A CONTRACT?

While the construction of a contract is a joint effort, by and large the *enforcement* or *implementation* of a contract is not. *Why* this is so will be dealt with subsequently. *That* it is so is most important. Management bears the primary and general responsibility for the implementation. Thus the fullest understanding of the contract in general and in painstaking specific by each administrator is absolutely vital.

This fact has a deep significance. It is essentially a fixation of responsibility. This is inescapable. It may be that the best description of administration is that it exists for the major purpose of bearing responsibility. If this were its only role, it would be a fundamental and important one. But this fact also emphasizes that authority is still with administration along with responsibility. That authority may be circumscribed; that authority may well be questioned or subjected to appeal. But this may, of itself, be not at all bad. Authority

should be circumscribed; it should be capable of being questioned; it should be subject to appeal.

Some analysts of this question go a bit further. Myron Lieberman in a recent article in *Harper's* (October 1971, Vol. 243, No. 1457, p. 70) made the following observation. ". . . . The paradox of faculty unionization is that, although it is a faculty initiative, perhaps its most salutary effects will not be what it does for professors, but what it will do to make administrations more efficient, more alert to innovation and more responsive to the public interest."

Eric Hoffer put it just a bit differently. He said, "It has been my observation for years that, while a wholly independent labor force does not contribute to management's peace of mind, it can yet goad management to perfect its organization and to keep ever on the lookout for more efficient ways of doing things."

HOW CAN THE NEGOTIATOR AID IN IMPLEMENTATION?

It would be contributory if the negotiators of the contract, especially the chief negotiator, were somehow involved either directly or indirectly in the responsibility for enforcement and implementation of the contract. Short of the creation of a perfect and a self-sustaining document, a most unlikely possibility, the formulation and the implementation of the contract can never be completely separated. Much will often hinge upon the intent of the authors, possibly even as much as upon the literal interpretation of the product of the authors if a successful solution of the problem of implementation is to be forthcoming. The authors possess a singular and non-reproducible identity with the document that is invaluable to all concerned.

WHAT IS THE FUNCTION OF THE GRIEVANCE PROCEDURE?

The critical and formal process through which the proper enforcement of contract is provided is, of course, the grievance procedure. A grievance is, at best, an allegation of violation, misinterpretation or misapplication of some specific provision(s) of the contract. This should be an almost classic and complete definition of the grievance and this definition should be expressed explicitly in the contract, as should, of course, the pre-

cise procedures and steps involved in the grievance process.

One cannot attach too much importance to the question of how the operation of the grievance procedure is perceived. It is a contract-*enforcing* mechanism and, as such, is contributory. It is a conflict-*resolution* process and not a conflict-*creating* one. It is, in effect, an assurance to both parties that the contract will be implemented equitably. Both parties should be vitally interested in this.

Well conducted, the grievance procedure has great possibilities, but it also has limitations. If the definition of a grievance is confined to allegations of violation, misinterpretation or misapplication of specific terms of the contract, the grievance procedure will serve its complete purpose. It is not an appropriate device for gripes or complaints about collegiate matters. The latter certainly should be provided for but in some less formal, more flexible, or empathetic "one-to-one" relationship than the grievance procedure can offer.

In short, don't expect the grievance procedure to do more than it is designed to do but, conversely, expect it to do what it *is* designed to do. No single more important aspect of the orientation or in-service education of administrators to the contract can be identified than complete familiarity and a sense of comfort with the grievance process. Much is made at times of the fact that "only one side (faculty) can grieve." This view misses at least three important points.

First, it suggests rather strongly that there is some advantage to grievance and some disadvantage to not being able to grieve. This is not the case.

Second, it seems to imply that grieving is somehow a capacity to injure or inflict pain. This "negative" approach to grievance is not only unbecoming it is inaccurate.

Third, it indicates a lack of understanding of the whole business of contract implementation.

All three of these items can be dealt with together.

The fundamental responsibility and authority to implement the contract rests with administration. The

initiative to act is administration's. The rule of thumb is obvious but bears enunciation. Administration acts and the union membership (collectively or individually or both) reacts. The filing of a grievance is this reaction.

If the filing of the grievance *is* evident as an act of hostility, then the "problem" is the existence of the hostility, not the existence of a grievance procedure or the act of grieving.

The grievance procedure is a means whereby, if it is well conducted and designed for handling matters judiciously and with reasonable dispatch, a contributory purpose can be served, or perhaps more accurately, several contributory purposes can be served.

While the filing of any one grievance is not a danger sign, the filing of many grievances certainly is. This calls for, at minimum, the review of two things: a) the adequacy of the contract and/or contract language; and b) the administrative attitudes and/or behavior with respect to the implementation of the contract. Either or both may prove to be less than desirable. This filing of many grievances may, of course, constitute harrassment by faculty acting in concert or as independent elements.

Under any circumstances the filing of a significant number of grievances is a phenomenon well worthy of critical examination.

The wise administrator will not only deal fairly with grievances as they arise, but he will expedite them as much as he can. One of the principles of justice is that it be as timely as possible. Inordinate delay, or the existence of unnecessary steps which could be regarded as barriers to resolution rather than contributors, is undesirable. One hesitates to say the less steps the better, but that is perilously close to the truth. The more laborious the appeal process, or the more cumbersome, the less effective it is likely to be.

Further, beyond the importance of dealing with grievances is the urgent responsibility of analyzing grievances, both individually and collectively. They may arise, for example, as a consequence of the attitude of an individual administrator. This kind of a problem should

be approached as soon as it is recognized, and either the attitude, or the administrator, changed.

But grievances are also frequently indicators of items which are extremely likely to appear as *issues* at the next round of bargaining. If this is readily appreciated, the administrative position can be thoughtfully determined and a well-prepared support devised.

Analysis of the grievance items and procedure may well serve other useful purposes to the benefit of all concerned.

There is one other matter regarding grievances that must be mentioned. The initial stage of a grievance procedure is usually, and wisely, an informal discussion between the person who feels aggrieved and the person against whom he feels aggrieved. This is a pre-requisite to the filing of a formal grievance.

It is sincerely hoped by both parties to the contract that this may avert the necessity of the formal grievance, since problems should be solved as close to the source as possible.

But some mechanism should be provided for transmission to some central point of "agreements" or solutions achieved in this informal manner. Lacking this, one of two things can readily occur:

1. Differing solutions, even conflicting response, can be generated in remote corners of the college which, when they do become known, and they will sooner or later, could create confusion and certainly represent inconsistency. Further, it is evident that a great deal of interface must occur among first echelon administrators concerning problems they encounter and between first echelon administrators and those to whom they report.

2. It is possible that the informal solution agreed upon may violate or modify some other portion of the contract. This should be guarded against at all costs.

The grievance procedure, however it works, is a formal path towards good faculty-administrative relationships. But it should never be assumed that effective working of the grievance process relieves one of the necessity of affording attention to other patterns of faculty-administrative relationships.

IS THE COMING OF BARGAINING THE END OF ALL OTHER FACULTY-ADMINISTRATIVE RELATIONSHIPS?

Collective bargaining is not, or need not be, a comprehensive set of relationships to the exclusion of all others. There are other formal and an infinite variety of informal relationships which may persist, perhaps even flourish, some of which may well be worthy of careful cultivation.

Faculty senates can conceivably endure in parallel with collective bargaining relationships, but only with great effort and only if both faculty and administration sincerely wish it. Department-divisional structures and processes will certainly continue. Committee patterns need not be vitally disrupted. The one-to-one informal channels which inevitably exist on any campus, while perhaps affected, can go on.

There is at least one formal and one informal post-negotiations pattern which should be explored. It might be a good idea to institute regular, perhaps monthly, meetings between the key administrators of the college and the bargaining agent's executive board to discuss real or potential problems and matters of mutual interest or concern which may be initiated by either party. Many headaches can thus be "cured" and many more avoided.

As an adjunct to this, the pivotal person most primarily responsible for good administrative-faculty relationships under the contract would be well advised to foster to the utmost a feeling of mutual respect and trust between himself and the leader of the bargaining group. If this trust and respect can be evidenced in continuing conversations which are moderate in tone and frank and uninhibited in content, much can be learned by each person of the problems and the possibilities evident to each. This is no substitute for the formal relationships, but it can be a very positive appurtenance to them

and it can also serve preventive as well as curative functions.

This can result in a situation where either party will feel free to say to the other, "Look, I see a potential problem arising which I think we'd both like to avoid. Can you talk to 'individual so-and-so' to see if he won't temper his conduct or his attitude? If we can't accomplish this, we're headed for a predictable collision."

This can work, but in no way is it easy to cultivate or to maintain.

SUMMARY AND CONCLUSION

The commentary provided by the task force of the American Association of Higher Education, published in 1967, is worth repeating. "In the long run, the attitudes of administrators and members of the boards of trustees towards the bargaining agent selected by a majority of the faculty will have a determinative effect on the nature of the relationship. If a bargaining agent is viewed as an aberration to be quashed or ignored, the introduction of bargaining relationships will be much more likely to disrupt the processes of higher education. Conversely, if the administrators accept the emergence of a bargaining relationship as an indication that serious problems of representation and policy exist, then the constructive contributions of the new arrangements may be maximized."

This is equally as true of the living with a contract as it is of the formulation of a contract.

Stated otherwise, while the *actions* of a bargaining agent may go far to influence the nature of the tone and the degree of tension of relationships between faculty and administration, the *reaction* of administration is much more vital and will go infinitely farther in these directions.

As the final statement of its extensive analysis of the current scene, the same A.A.H.E. task force offered this advice.

"As part of the conventional wisdom in labor-management relations, it is often said that employers get the kind of industrial relations they deserve. Although this admonition, like most generalizations, is not

applicable in all cases, it contains sufficient validity to warrant a restatement in the context of institutions of higher education. The pattern of campus governance that prevails in the future will be determined by the measures taken by governing boards and administrators to deal with faculty aspirations now."

It may be of some small comfort for administrators who may, for a brief moment, have lost their faith or confidence in the shape of things to come that they may not have lost what was their most prized professional attribute: the capacity to be leaders. Indeed the challenge really is that whereas in the past leadership has been simply expected of them, in the future it will be required of them.

This is a time of crisis. But one must remember the classic definition of what a crisis really is. It is *not* a moment of tragedy or disaster. It is rather the point in the drama at which the fortunes of the protagonists begin to turn, for the worse or for the better, and which of these it will prove to be the author determines with a steady pen.

Boards and faculty together have it upon them, either as a monstrous burden or as a gigantic opportunity, that they are the co-authors of the drama.

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